

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DGC 80-08250

CENTER FOR NATIONAL SECURITY)
STUDIES, et al.,)

Plaintiffs,)

v.)

Civil Action No. 80-1235

CENTRAL INTELLIGENCE AGENCY,)
et al.,)

Defendants.)

AFFIDAVIT

Leslie C. Dirks, being first duly sworn, does hereby
depose and say:

1. I am the Deputy Director for Science and Technology
of the Central Intelligence Agency ("CIA"). As such, I am
responsible for the overall management and supervision of the
Directorate of Science and Technology ("DS&T"), one of the
Agency's four Directorates.^{1/} In this role, I report
directly to the Deputy Director or to the Director of Central
Intelligence ("DCI"). I have occupied this position since
June 1, 1976. The statements made herein are based upon my
personal knowledge, upon information made available to me in my
official capacity, and upon advice and counsel of the Office
of General Counsel.

2. As the Deputy Director for Science and Technology, and
as a part of the exercise of my official duties, I am ultimately

^{1/} The other three directorates of the CIA are the
Directorate of Operations, the National Foreign Assessment
Center, and the Directorate of Administration.

responsible for the review of information which is held by the DS&T and which is the subject of Freedom of Information Act ("FOIA") and Privacy Act requests to and litigation against the Central Intelligence Agency. As part of such review, I am responsible for insuring that the determinations made regarding the disposition of such information are proper.

3. As part of the performance of my official duties, I have become acquainted with the twelve FOIA requests submitted to this Agency by the Plaintiffs in this litigation. More particularly, I have become acquainted with a FOIA request submitted by plaintiff Andres--a request which is described in Count XII of plaintiffs' complaint (copy attached). In that request, plaintiff Andres sought, on behalf of the Center for National Security Studies, the following:

... copies of any photographs of the United States obtained by the National Reconnaissance Office or any other agency component of the Defense Department of the CIA through any method of overhead reconnaissance, including satellite surveillance, during the years 1966, 1968, 1969, 1978 and 1979.

Plaintiff Andres also sought copies of any analyses of such photographs made by the National Photographic Interpretation Center or any other component of this Agency.

4. This Affidavit is submitted to explain my determination that any reconnaissance photography^{2/} and related analyses responsive to Plaintiff Andres' request must be withheld in their entirety. I have made this determination on the following grounds:

^{2/} A search of appropriate records indices identified U-2 coverage collected during five missions flown by the United States Air Force that was responsive to Plaintiff Andres' request. This photography and certain analytical documents has been referred to the Air Force for a reply directly to Plaintiff.

(a) because such photography and related analyses are currently and properly classified pursuant to Executive Order 12065 as information requiring continued protection against unauthorized disclosure and, as such, are exempt from release pursuant to exemption (b)(1) of the FOIA; and

(b) because such photography and related analyses constitute intelligence sources and methods which the Director of Central Intelligence is responsible for protecting against unauthorized disclosure as set forth in 50 U.S.C. 403(d)(3) and, as such, are exempt from release pursuant to FOIA exemption (b)(3).

These rationales and their applicability to reconnaissance photographs and related analytical documents will be set forth below.

5. The authority of a CIA official to classify documents is derived from a succession of Executive Orders, the most recent of which is Executive Order 12065. This Order governed the review of classified information responsive to Plaintiff Andres' request. As the Deputy Director of Science and Technology and pursuant to a written delegation of authority from the DCI under sections 1-201, 1-204 and 3-303 of E.O. 12065, I hold original classification authority at the TOP SECRET level and, therefore, am authorized to make classification reviews. With regard to the reconnaissance photography and analyses which are responsive to Plaintiff's request, I

have determined that, with one exception^{3/}, all such materials have been properly classified and that these materials retain their classified status at the SECRET or TOP SECRET level pursuant to Executive Order 12065. These materials contain information which falls within one or more of the following general categories set forth in section 1-301 of E.O. 12065 as proper subjects for classification:

- (a) information pertaining to intelligence activities, sources or methods (§1-301(c)); or
- (b) information pertaining to foreign relations or foreign activities of the United States (§1-301(d)); or
- (c) information pertaining to scientific, technological or economic matters relating to the national security (§1-301(f)).

6. The release of materials responsive to Plaintiff's request reasonably can be expected to cause either serious or exceptionally grave damage to the national security in the sense that this term is used in §§1-1 and 6-1 of E.O. 12065. Such damage to the national defense or the foreign relations of the United States would reasonably be expected to occur by:

- (a) the disclosure of performance capabilities of overhead intelligence collection systems; or

^{3/} A small quantity of domestic overhead photography was obtained to assess the feasibility of using conventional technology for foreign intelligence collection. I have determined that the public release of this photography would compromise an intelligence method and is, therefore, exempt from disclosure on the authority of exemption (b)(3) of the FOIA. In addition, 15 rolls of unclassified domestic overhead photography were obtained from the U.S. Geological Survey. This photography ranges in date from 1964 and 1978. Although this photography is not within the scope of Plaintiff's request, it should be noted that copies of this photography may be purchased from the U.S. Geological Survey or may be obtained from this Agency upon payment of the cost of reproduction.

(b) the disclosure of the fact that a particular photo-reconnaissance satellite system was operational at a particular point in time; or

(c) the disclosure of the types of targets against which overhead photo-reconnaissance was directed; or

(d) the disclosure of photo-reconnaissance satellite coverage of foreign nations.

These disclosures could occur if reconnaissance photography of the United States was provided to Plaintiff in response to her FOIA request.

7. In addition, Executive Order 12065, at section 3-303, provides for a further consideration with regard to classification:

...In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to...a senior agency official...or...an official with Top Secret classification authority...That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. [Emphasis added.]

In accordance with this section of the Order, I have also examined my determinations in light of an Agency Regulation (see Attachment II) which implements this portion of the Executive Order and which was predicated upon the advisory letter (see Attachment III) of Mr. Zbigniew Brzezinski, Assistant to the President for National Security Affairs.

8. The purpose of this particular aspect of my classification review of the categories of reconnaissance photography and related documents responsive to Plaintiff's request was to determine whether circumstances existed which required that the need to protect properly classified information be

balanced against the public benefits of disclosure. Upon completion of my review of the categories of information responsive to Plaintiff Andres' request, I determined that the requisite circumstances do not exist and, consequently, such reconnaissance photography and analyses thereof continues to warrant its current classified status.

9. In sum, the photography and documents responsive to Plaintiff's FOIA request fall within categories of information recognized by Executive Order 12065 as proper subjects for classification. The disclosure of these materials could reasonably be expected to cause either serious or exceptionally grave damage to the national security. As a result, I have determined that all overhead photography and related documents responsive to Plaintiff Andres' request in the custody of the National Photographic Interpretation Center, except to the minor extent noted above, are properly classified pursuant to the most recent Executive Order dealing with classification of national security information. This information is properly withheld in its entirety pursuant to exemption (b)(1) of the Freedom of Information Act. No meaningful, segregable portions of such overhead photography may be released.

10. In my classification review, I did not conduct a photograph-by-photograph examination of reconnaissance imagery and related analytical documents responsive to Plaintiff's request. In my opinion, no such review was necessary and would, if it was conducted, constitute a sterile exercise in light of the subject matter of Plaintiff's request--reconnaissance photography taken via intelligence collection systems. Moreover, such a photograph-by-photograph review would be burdensome to undertake.

11. As the Deputy Director of Science and Technology, I am responsible, inter alia, for the development and operation of technical intelligence collection programs of the Central Intelligence Agency. Moreover, I have personally participated in the design and development of certain technical intelligence collection systems. Because of my personal knowledge and because of information made available to me in my official capacity, I am familiar with (1) the technical systems which produced photography responsive to Plaintiff's request and (2) the categories of photography responsive to this request. The various aspects of the existence, uses, technical attributes, dates of operation and performance characteristics of such overhead reconnaissance systems constitute information properly classifiable under the criteria established by Executive Order 12065. The products of such systems also constitute classified information under that Order. For the reasons stated, no photograph-by-photograph review was undertaken because of the obvious sensitivity of the information sought by Plaintiff and because of my familiarity with the categories of reconnaissance photographs and related analytical documents that would be responsive to her request.

12. Proper classification of national security information is not the only reason for withholding reconnaissance photography and related documents responsive to Plaintiff's request. By statute (50 U.S.C. 403(d)(3)), the Director of Central Intelligence is charged with the responsibility of protecting intelligence sources and methods from unauthorized disclosure. Intelligence sources and methods include information, the disclosure of which could reveal the details

surrounding those photo-reconnaissance collection systems that have been designed for the collection of foreign intelligence. Although it has been officially acknowledged that the United States government employs satellite photo-reconnaissance for certain purposes--purposes associated with arms limitation treaties--the other details surrounding the use of such satellites have not been disclosed publicly. Detailed information regarding the capabilities or the employment of such satellite systems or their products could be of significant assistance to hostile foreign powers who would wish to frustrate the information collecting capabilities of such systems.

13. Information regarding the products or performance of photo-reconnaissance systems relates directly to intelligence sources and methods. This is so because photo-reconnaissance is an important method through which the United States acquires intelligence information. In many cases, such information is not readily obtainable by other means. While the statutory phrase "intelligence sources and methods" is frequently applied to human collection activities and clandestine CIA operations, this phrase is also applicable to the collection of intelligence information by photo-reconnaissance. Reconnaissance photography is clearly a valuable source of intelligence information and one deserving protection comparable to that accorded sensitive human collection programs or sensitive special activities undertaken by CIA.

14. Satellite photography obtained for intelligence purposes constitutes an especially important source of information regarding the activities of foreign powers. The specific capabilities of such satellite systems, their existence and fact of operation at specific points in time,

their targets and operational uses can be surmised from the photography that is responsive to Plaintiff's request. Accordingly, such reconnaissance photography and analyses thereof is also not subject to disclosure on the authority of exemption (b)(3) of the FOIA on the ground it is specifically protected by the statutory provision the Director of Central Intelligence shall be responsible for safeguarding intelligence sources and methods.

15. The remainder of this Affidavit will set forth the rationale which justifies (1) the withholding of overhead photography and related documents responsive to Plaintiff's request, and (2) the nondisclosure of a variety of matters associated with such sensitive documents. While these reasons may not be set forth fully in an unclassified affidavit, a number of pertinent rationales and justifications may be provided, in general terms, without disclosing classified information and without compromising intelligence sources and methods.^{4/}

16. By referring in her request to "overhead reconnaissance "satellite surveillance," and "analysis of such photographs," Plaintiff Andres indicates she is seeking photographs and related documents associated with imagery obtained via overhead reconnaissance methods. Until relatively recently, the mere fact the United States conducted satellite photo-reconnaissance had not been acknowledged and had constituted classified information. On October 2, 1978, President Carter, during remarks made as part of a Congressional Space Medals awards

^{4/} If an additional and more detailed explanation is required by the Court, I would be prepared, upon request, to submit a classified affidavit for the Court's in camera review.

ceremony at the Kennedy Space Center, made the following announcement:

Photo-reconnaissance satellites have become an important stabilizing factor in world affairs in the monitoring of arms control agreements. They make an immense contribution to the security to all nations. We shall continue to develop them.

As a result of this Presidential declaration, agencies and departments of the federal government are now permitted to acknowledge that the United States does conduct satellite photo-reconnaissance and that such photo-reconnaissance has been used as a means to verify compliance with the SALT agreement. No additional official acknowledgment or disclosures, however, have been made with reference to the use of satellite photo-reconnaissance for intelligence purposes.

17. While the fact photo-reconnaissance satellites are used by the United States as a means of obtaining arms control information has been acknowledged in very general terms, virtually none of the "details" regarding the use or capabilities of such photo-reconnaissance satellites have been disclosed. In this regard, this Agency has acknowledged it has custody of classified satellite and other reconnaissance photography. The scope and extent of this disclosure has been limited and did not involve a recitation of any of the "details" regarding the performance characteristics of U.S. photo-reconnaissance satellites or other reconnaissance systems.

18. In light of the subject matter of Plaintiff Andres' request, I have determined that the Central Intelligence Agency cannot disclose in any public document (1) the overall number of potentially responsive photographs and analyses thereof in the custody of the National Photographic

Interpretation Center; (2) the specific geographic area or areas within the United States which have been subject to overhead photo-reconnaissance;^{5/} (3) the satellite photo-reconnaissance system which produced the responsive photography; or (4) the specific timeframe during which satellite photo-reconnaissance of a particular geographic area occurred or the specific number of photographs obtained during such periods. I have also determined that no particular classified reconnaissance photograph, or analyses or interpretation thereof that may be responsive to Plaintiff's request may be released or described in specific detail in any public document. Any disclosure of these categories of information could, in my opinion, reasonably be expected to cause either serious or exceptionally grave damage to the national security as this concept is defined in section 6-104 of Executive Order 12065. Disclosure of the categories of information noted above, in any public forum, would (1) result in the unauthorized release of information that has been duly classified at the SECRET and TOP SECRET classification designations or (2) would result in the compromise

^{5/} Reconnaissance photography of locations in the United States has been taken for a variety of purposes, most of which fall into two general categories. First, reconnaissance photography is taken of targets in the United States the foreign counterparts of which are of substantive intelligence interest. By comparing overhead photographs of known U.S. targets with their foreign counterparts, this Agency is able to make sophisticated and knowledgeable determinations regarding foreign targets. Second, reconnaissance photography is taken of domestic locations in order to determine the performance parameters of collection systems. By analyzing such photography, this Agency is able to calculate the resolution of photographs generated by a system and to assess other performance parameters. These performance characteristics constitute information which is both classified pursuant to E.O. 12065 and which relates directly to intelligence sources and methods.

of information relating directly to intelligence sources and methods--information the Congress has charged the Director of Central Intelligence, by statute, with the responsibility for protecting from unauthorized disclosure (50 U.S.C. 403 (d)(3)).

19. My determination this Agency cannot make detailed public disclosures regarding satellite photography and related documents that are potentially responsive to Plaintiff Andres' request hinges upon an understanding of the extent to which the United States Government has officially acknowledged its role with regard to such overhead photo-reconnaissance. While the existence of satellite photo-reconnaissance intelligence collection systems have been acknowledged by the United States, their operational attributes, or other technical information regarding their reconnaissance capabilities or their imagery products have not been disclosed. Disclosures regarding the technical attributes of overhead reconnaissance systems or associated products, such as actual photographs or analyses thereof, would cause serious damage to the national security of the United States. Public disclosure of any specific data regarding such overhead reconnaissance--including the release of a single photograph taken--for intelligence purposes--would permit, through the application of sophisticated analytical techniques, a knowledgeable photo-scientist, foreign power or hostile intelligence service to estimate performance characteristics of the originating photo-reconnaissance system.

For example, from a single frame of photography produced by a satellite photo-reconnaissance system, it is possible to calculate, with reasonable confidence, important performance characteristics and capabilities of the satellite system that produced it. For this reason, no single frame of classified satellite photography relevant to plaintiff's request may be released, or described in detail.

20. Public disclosure of a single frame of photography produced by a classified overhead reconnaissance system would result in the compromise of the following categories of information regarding the originating overhead system.

- (1) format and parameters of the imagery; or
- (2) the potential uses of information obtained from satellite photo-reconnaissance;
- (3) the uses made of a specific photo-reconnaissance system; or
- (4) the "fact that" a particular satellite photo-reconnaissance system was operational at a particular time or the "fact that" a particular type of satellite is used for foreign intelligence photo-reconnaissance; or
- (5) operational capabilities of photo-reconnaissance satellite systems.

These categories of information constitute "details" of overhead reconnaissance systems. It is my considered judgment that if these details were disclosed publicly, either directly or indirectly through the release of reconnaissance photography in response to Plaintiff's request the system to which such disclosed information related would be compromised.

21. In order to enhance the security surrounding a reconnaissance system, a variety of categories of information associated with such systems have been duly classified. These categories include information which would indicate, acknowledge or tend to acknowledge:

- (1) the fact that a particular satellite was operational and engaged in the collection of information for intelligence purposes; or
- (2) the fact that a particular level of photo-reconnaissance technology was in use at a specific time; or
- (3) the quality and quantity of the photographs produced or their geographic distribution; or
- (4) applications made of reconnaissance satellites; or
- (5) assessments of the performance of reconnaissance satellites; or
- (6) support data associated with reconnaissance collection; or
- (7) specific performance capabilities and technical characteristics of an identifiable reconnaissance system.

The classified categories of information noted above could be compromised by release of reconnaissance photographs and associated analytical documents that are responsive to Plaintiff Andres' FOIA request. Intelligence sources and methods would also be compromised by such a release of information.

22. Since Plaintiff Andres' request seeks photographs produced by reconnaissance systems, the capabilities of which are properly classified in accordance with the criteria set forth in E.O. 12065, and which relate to intelligence sources and methods, it logically follows that any information regarding the products of such systems cannot be disclosed. Any responsive reconnaissance photographs and associated analytical documents constitutes properly classified information and also constitutes information directly related to intelligence sources and methods. This is so because reconnaissance photography of specific areas within the United States has been obtained to facilitate intelligence research of analogous features in foreign areas or to determine the performance of the collection system.^{6/} The selection and specific character of such areas reflects substantive intelligence interest or system capabilities. This information must be safeguarded.

23. If this Agency was required to release a single satellite reconnaissance photograph taken on a specific date--e.g., an overhead photograph of a U.S. naval installation in Hawaii--important capabilities of the satellite system involved would be compromised. Since the satellites passing within sight of the target at the time of coverage can be

^{6/} Such performance testing includes the measurement and analysis of the capabilities of the system's camera and film and the manner in which they are influenced by lighting and atmospheric conditions.

determined, release of even a single photograph could permit a hostile intelligence service or trained photo-scientist to reach the following conclusions:

- that a particular satellite was used for intelligence purposes and that this satellite was operational at the time of collection;
- that this particular satellite was capable of providing an identifiable level of detail about activities on the ground;
- that this satellite probably would be targeted against other similar facilities elsewhere in the world; and
- that this satellite possessed or lacked certain capabilities for collecting intelligence information.

24. Disclosure of these categories of information could reasonably be expected to result in serious or exceptionally grave damage to the national security of the United States and would also constitute a compromise of intelligence sources and methods. If a hostile foreign power became aware of the performance characteristics and technical attributes of a particular overhead satellite reconnaissance system, it might be able to develop appropriate countermeasures to nullify the effectiveness of the system against intelligence targets within its territory. The disclosure of such information would also permit a hostile foreign power to estimate the extent of technological development of a particular operational

photo-reconnaissance system, the classes of targets the system was directed against, and areas of substantive intelligence interest to the United States Government.

25. Disclosure of the categories of information noted in paragraph 24 above would also be detrimental to the foreign relations of the United States. This is so because foreign nations have only tacitly accepted the use of satellite photo-reconnaissance systems as a verification tool for treaty monitoring. Accordingly, there is a potential that any disclosure of the specifics of a satellite system used to obtain photo-reconnaissance for intelligence purposes could produce a strain in relations between the United States and other countries.

26. It is also important to note that the release of a single frame of reconnaissance photography in response to Plaintiff's request may result in the compromise of several layers of secrecy. The first level involves the secrecy of the very existence of a particular intelligence collection technique. For many intelligence methods such secrecy is critical since knowledge of the existence of a particular technical means of intelligence collection or of the details of the activity may permit hostile forces to undertake countermeasures and, accordingly, diminish if not eliminate the utility of the collection effort. A classic example of such a disclosure concerns the vessel known as the Glomar Explorer whose usefulness as part of a technical intelligence collection program was impaired upon disclosure of its true status.

27. The second level of secrecy potentially subject to compromise by the public release of particular satellite reconnaissance photographs of a particular place at a specific time involves two discrete factors. The first factor concerns disclosure of a substantive area of intelligence interest; e.g., naval intelligence in the hypothetical situation noted above. The second factor involves operational characteristics of the particular reconnaissance system. While the fact a specific satellite photo-reconnaissance system is operational and used for foreign intelligence purposes demands protection, a more particularized disclosure could compromise of operational characteristics of the system. The nature of such a compromise is highlighted below.

28. If, in the example noted in paragraph 23 above, a single photograph of a naval facility in Hawaii was revealed, a number of characteristics of the reconnaissance system that produced this imagery could be surmised. A review of a particular satellite photograph would permit a knowledgeable photo-scientist to estimate the performance capabilities of the overall imagery system that produced it. An analysis of a single photograph would result in compromise of the following:

- (1) the resolution of the system;
- (2) other technical characteristics of the system;
- (3) the conditions under which such system could operate; or

- (4) special capabilities and features of the system might possess.

Revelation of this information might permit a hostile foreign country to determine the precise type of countermeasures necessary to frustrate the operation of the system and the geographic areas in which such countermeasures should be taken. For example, the precise resolution of satellite reconnaissance photography taken for intelligence purposes is closely guarded. This is so because the resolution--that is, the size of an object on the ground that may be identified by imagery produced from a particular system--is a critical parameter providing clues as to the uses of the system and the countermeasures necessary to impair its usefulness. The resolution obtained by a particular satellite-reconnaissance system can be estimated from an examination of a photograph produced by the system. Similarly, the area coverage capabilities of a particular system might also be disclosed by release of a single photograph. This type of information is of critical intelligence value to a hostile power intent upon frustrating the intelligence gathering capabilities of a particular satellite system. This is so because these capabilities, if disclosed, would allow a hostile power to estimate important collection capabilities of a particular satellite and the extent to which countermeasures could be expected to be successful.

29. Revelation of a single photograph, under certain conditions, might also permit an informed analyst, foreign

government or hostile intelligence service to surmise the limiting lighting and atmospheric conditions under which a photo-reconnaissance system could operate. The fact that a particular system could continue or not continue to obtain imagery under such limiting conditions could be substantial intelligence value.

30. For all of the reasons stated above, I have concluded that none of the "details" surrounding the use of photo-reconnaissance may be publicly revealed through the release of photography and analysis thereof in response to Plaintiff's request. All of the details surrounding these reconnaissance systems constitute properly classified information. Such information cannot be disclosed without seriously impairing the national defense efforts of the United States and the intelligence gathering activities of this Agency. Accordingly, any photographs and analyses thereof that are responsive to Plaintiff Andres' request and any more specific information related thereto constitute classified information that must not be disclosed. For these same reasons, such information also constitutes an intelligence source and an intelligence method that are statutorily protected and coextensively exempt for disclosure under the FOIA. Accordingly, this information is coextensively exempt from disclosure pursuant to exemptions (b)(1) and (b)(3) of the Freedom of Information Act and on the authority of 50 U.S.C. §403(d)(3). No meaningful segregable portions of these responsive documents may be released.

31. The sensitivity of the information sought by Plaintiff Andres cannot be over-emphasized. A full explication of the rationales and justifications underlying my determination that this Agency cannot disclose even a single reconnaissance photograph that is potentially responsive to her request cannot be recited in an unclassified affidavit. I have, however, outlined this rationale to the extent possible in an unclassified submission. In my opinion, a more detailed explication of this rational cannot be made in an unclassified affidavit in a manner that is consistent with the classified nature of the information at issue and consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure.



Leslie C. Dirks

COMMONWEALTH OF VIRGINIA)
)
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 11th day of
September 1980.



Notary Public

My commission expires: 17 April 1982